INVESTIGATIVE SUMMARY
DEPUTY INVOLVED HIT SHOOTING
IAB SH 2114412
IAB FO 2114414
URN: 004-02160-6008-055

On Monday, March 29, 2004, at about 2200 hours, Sergeants William Hines and Tamara Alexander and Lieutenant Greg Johnson of the Internal Affairs Bureau responded to the 2800 block of Del Mar Avenue, Long Beach, regarding a Deputy Involved Hit Shooting involving Transit Services Bureau personnel. In addition to three deputies using deadly force, two deputies used less than lethal force (Stunbag shotguns).

The summary of this incident is based on information obtained from interviews of the involved employees and witnesses, whose individual statements are contained in the Homicide Bureau case package. **Refer to Exhibit A**

INVOLVED PERSONNEL THAT USED DEADLY FORCE:

RIORDAN, Daniel, Deputy, #[redacted]
GARCIA, Dianne, Deputy, #[redacted]
KELLEY, Tina, Deputy, #[redacted]

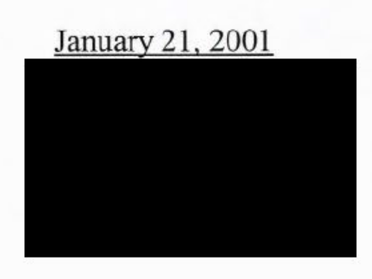
INVOLVED PERSONNEL THAT USED LESS THAN LETHAL FORCE

[redacted] Deputy, #[redacted]
[redacted] #[redacted]
Transit Services Bureau
Field Operations Region II

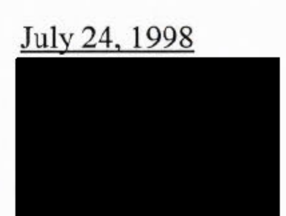
EMPLOYEE WORK HISTORY:

RIORDAN, Michael

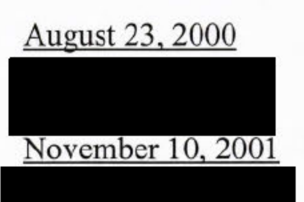
Date of Employment: January 21, 2001
Date assigned to Patrol:
Completed Patrol Training:
Prior Shooting Incidents:
Prior Founded Force Incidents:


[redacted]

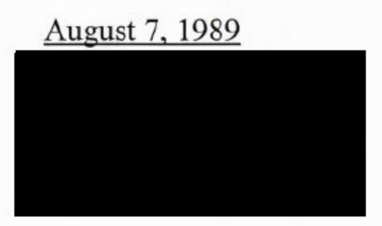
GARCIA, Dianne

Date of Employment:	July 24, 1998
Date assigned to Patrol:	 [redacted]
Completed Patrol Training:	
Prior Shooting Incidents:	
Prior Founded Force Incidents:	

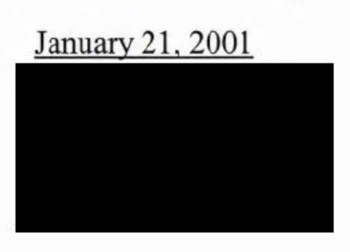
KELLEY, Tina

Date of Employment:	August 23, 2000
Date assigned to Patrol:	 [redacted]
Completed Patrol Training:	
Prior Shooting Incidents:	November 10, 2001
Prior Founded Force Incidents:	[redacted]

[redacted]

Date of Employment:	August 7, 1989
Date assigned to Patrol:	 [redacted]
Completed Patrol Training:	
Prior Shooting Incidents:	
Prior Founded Force Incidents:	

[redacted]

Date of Employment:	January 21, 2001
Date assigned to Patrol:	 [redacted]
Completed Patrol Training:	
Prior Shooting Incidents:	
Prior Founded Force Incidents:	

SUSPECT:

ELLIS, Kevin M/B/39

Suspect Ellis' criminal history indicates that he has been [redacted] He was on probation at the time of this incident. **Refer to Exhibit A, Pages 137 through 144 for Suspect Ellis' Criminal Record**

WITNESSES:

Sworn:
Deputy Scott Harper
Deputy Mario Rodarte
Deputy Robert Reynolds
Deputy Eric Albano
Deputy Raymond Dietrich
Sergeant Gaylord Imura
Deputy Marlon Quesada
Deputy [redacted]
Deputy Amore Smith

> **IAB Note:** There were several deputies at the scene that did not witness the actual shooting of the suspect, however, they were interviewed by Homicide investigators. **Refer to Exhibit A, Pages 60, 71, 76, 95, 153, & 158 for their statements**

Civilian:
None

> **IAB Note:** There were no civilian witnesses to the actual shooting, however, Homicide investigators interviewed several people that saw only a portion of the incident and/or heard shots being fired. **Refer to Exhibit A, Pages 62 through 70 for their statements**

INJURIES:

Suspect Kevin Ellis received one gunshot wound to the front upper torso area. He was transported to Long Beach Memorial Hospital where he was admitted and treated for his gunshot wound. The bullet was removed from Suspect Ellis by Doctor Brian Acker. No deputies were injured during this incident.

PHYSICAL EVIDENCE:

Several 9mm shell casings and expended beanbag shotgun shell casings were located at the scene. **Refer to Exhibit A, Pages 53 through 57 and pages 124 through 131 for the list of physical evidence and the location of the shell casings and Page 132 for the Scene Diagram**

INVESTIGATOR OBSERVATIONS:

The location of the shooting was on the section of the Metrolink tracks that services the "Blue Line" of the Metro Rail. The incident initially started at the Willow Street platform of the Metrolink. It

ultimately ended north of the Willow Street platform, near the railroad tracks. **Refer to Exhibit A, Page 55 through 57 for a complete description of the area**

WEAPONS USED BY DEPUTY PERSONNEL:

Deputy Riordan fired three rounds from his duty weapon: **Beretta 9mm Luger Caliber, Model 92FS, double action semiautomatic pistol, Serial Number BER**[redacted]

Deputy Garcia fired four rounds from her duty weapon: **Beretta 9mm Luger Caliber, Model 92FS, double action semiautomatic pistol, Serial Number BER**[redacted]

Deputy Kelley fired two rounds from her duty weapon: **Beretta 9mm Luger Caliber, Model 92FS, double action semiautomatic pistol, Serial Number BER**[redacted]

Deputy [redacted] fired 4 bean bag rounds from his Stunbag Shotgun: **Ithaca 12 Gauge, Model 37 D.S. Police Special pump action shotgun, Serial Number MAG**[redacted]

Deputy [redacted] fired 4 bean bag rounds from his Stunbag Shotgun: **Ithaca 12 Gauge, Model 37 D.S. Police Special pump action shotgun, Serial Number MAG**[redacted]

All weapons were examined, test fired, and found to be functional by Firearms Examiner Manuel Munoz. **Refer to Exhibit A, Pages 124 through 129 for the Firearms Examiner Report**

WEAPONS USED BY SUSPECT:

None

PROPERTY DAMAGE:

None

CRIMINAL INVESTIGATOR/CHARGES FILED:

Homicide Bureau Detectives:
INVESTIGATOR RANDY SEYMOUR #[redacted]
INVESTIGATOR BRIAN STEINWAND #[redacted]

On May 27, 2004, Los Angeles County Deputy District Attorney Carrie Smith reviewed the facts of this case and declined to file charges of 148 (A) PC- Interfering or Delaying a Peace Officer and 245 (C) PC-Assault with a Deadly Weapon. She wrote, *"Insufficient evidence to prove beyond a reasonable doubt that the suspect intended to hit the officers. The officers were not struck by the rocks and based on the evidence it appears that the suspect was trying to provoke the officers into*

shooting him as opposed to trying to actually injure the officers. In the interest of judicial economy, PC 148 charge to be used to violate the suspect's probation for PC 236 in TA065347 in lieu of referring the case to the City Prosecutor for a misdemeanor filing."

LIGHTING AND WEATHER CONDITIONS:

This incident occurred during the night time hours. The weather was cool and clear. There were nearby street lights as well as two light poles, just to the west of the shooting scene. The area was also illuminated by deputies' flashlights, patrol car headlights and illumination from an airship. **Refer to Exhibit A, Page 57 for a complete description of the lighting at the location.**

INVOLVED EMPLOYEE'S STATEMENTS:

DEPUTY DANIEL RIORDAN

Deputy Riordan was interviewed by Homicide investigators on March 30, 2004, at 0145 hours at Transit Services Bureau Headquarters. His attorneys, Helen Schwab and John Birke, from Green and Shinee, were present during the interview. Additionally, the interview was audio taped and summarized as follows:

Deputy Riordan told Homicide investigators that at the time of the incident, he was assigned to Transit Services Bureau/Rail Operations Center. He was working the P.M. shift with his partner, Deputy Scott Harper, in Unit 604F2. Their specific assignment was the "Blue Line." They started their shift at [redacted] Deputy Riordan was the driver and Deputy Harper was the bookman.

At about 2030 hours, Deputy Riordan and his partner pulled up to the Willow Station Platform parking lot, near Willow Street and Long Beach Boulevard. As they drove through the parking lot, Deputy Riordan noticed that a train had stopped on the west tracks just north of the train platform. Deputy Riordan said that it was unusual to see a train stopped at that time and at that location since passengers did not board at that location. They pulled beside the train on the west side and saw the operator. The train operator waved to them and told them that there was a "crazy guy" running up and down the tracks. He pointed back toward the train tracks. Deputy Riordan looked in the area and saw a male Black in his forties, run from the rear of the train and he yelled to the deputies something to the effect, "Yeah, come on over here and get me guys!"

Deputy Riordan said he looked at his partner and made a comment that the guy was "918." Deputy Riordan said the only safe area to park their patrol car was in a parking lot which was about 200 yards north of their location. As he drove to the lot, Deputy Harper notified their desk on L-tac, that they had a 918 on the tracks. He also requested two units back-up and asked that the train traffic be stopped at the Willow Station.

They parked their patrol car on Spring Street and started walking southbound on the train tracks. Deputy Riordan said that he could not see the suspect at this time. As they walked southbound on the tracks, Deputy Harper checked on the status of the back-up units. Deputy Riordan felt that the suspect was also possibly under the influence. He added that it is not unusual to get calls regarding people on the tracks, and they usually are "homeless people."

Deputy Riordan said that as they were walking, he realized the area was "poorly lit," and he could not see the suspect. The only lighting was that coming from the train's headlight. Deputy Riordan advised Deputy Harper to have his weapon drawn to cover him. Deputy Riordan had his pepper spray out and in his hand ready to be deployed if the suspect became aggressive. When they reached the area where they had last seen the suspect, they could not see the suspect. They moved to the far east side of the train tracks for possible cover in a ditch, near some hedges. They continued to walk southbound, and heard a voice coming from an area in the bushes on the east side of the tracks. The voice said, "Yeah, come on over here mother fuckers." Deputy Riordan looked and saw the suspect crouched down in some bushes on the east embankment leading up toward a parking lot. Shortly after the suspect yelled, he picked up a rock and threw it at them. Deputy Riordan said the rock went over their heads. The rocks were "palm size." Deputy Riordan and his partner took cover behind a lamp post and Deputy Harper radioed that they were "taking rocks" from the 918.

At this point, Deputy Riordan holstered his pepper spray and drew his weapon. He then ordered the suspect to stop throwing rocks and to come out from the bushes. The suspect threw two more rocks at them. Deputy Riordan again ordered the suspect to stop throwing rocks and come out of the bushes. Deputy Riordan said he could see the suspect sitting in a crouched position, with his knees in front of him and he was "hunched" forward. The suspect had his left hand on the inside of his left thigh and his right hand was in his right front waistband. The suspect was wearing a dark colored jacket that was open in the front and Deputy Riordan said that he could clearly see the suspect's right hand was in his waistband. Deputy Riordan asked his partner if he could see what the suspect had in his right hand, and Harper replied, "No I don't see it. It looks like he has something." Deputy Riordan thought the suspect had something in his hand. He then gave the suspect several orders to show his hands and step out. The suspect would yell back, "non-sensible statements." This affirmed Deputy Riordan's belief that the suspect was unstable.

Deputy Riordan was aware that assisting units were still several minutes away.

Deputy Riordan repeated his orders for the suspect to show his hands and come out of the bushes. The suspect ignored the orders. Deputy Riordan then yelled to the suspect, "What's in your right hand, what are you holding?" The suspect yelled, "I've got a gun. Come over here and I'll show it to you." Deputy Riordan said after hearing this, he immediately proned out behind the light post. They immediately notified responding units via their radio of the possible weapon. They also requested that the train platform be cleared in case of any gun fire.

The suspect continued to make "baiting statements," like, "Come on over guys. Come over, I'm waiting here for you." Deputy Riordan attempted to calm the suspect by saying, "We don't want to have a confrontation. Why don't you just show me what's in your hand? What can we do for you? How can we help you?" The suspect would not respond to those questions and just repeated, "Come on in guys, I'm waiting." The suspect laughed a couple of times and continued to sit hunched over with his right hand in his waistband.

A short time later, two back-up units arrived and parked in the lot just to the east of Deputies Riordan and Harper. They advised the arriving deputies of the suspect's location and not to walk too far south of their location. Arriving deputies then cut an opening in the chain link fence just east of Deputies Riordan and Harper. Deputies Kelly and Garcia joined Deputies Riordan and Harper. Deputy Riordan pointed out to them the object in the suspect's right hand. Deputy Riordan advised Deputies Kelly and Garcia that the suspect said that he had a gun. Deputy Garcia proned out next to Deputy Riordan and Deputy Kelly took a position to the left of Deputy Harper. A third deputy took a position to the east up on the embankment in order to contain the suspect.

As additional units arrived, Deputy Riordan focused directly on the suspect. Another deputy took a position on the west side of the tracks. Deputy Riordan advised all responding deputies that the suspect possibly hand a gun in his right hand. Deputy Riordan continued to order the suspect to show his right hand. He also tried to talk the suspect out by asking him what he wanted. The suspect would not answer. The suspect again said, "Come over here."

Deputy Riordan said at this point, a sergeant arrived and deployed a deputy with a shield in an area to the left of Deputy Harper. Deputy [redacted] arrived with a stunbag shotgun and positioned himself behind them. Deputy Riordan said that by the time Deputy [redacted] arrived, they had been there for about twenty to thirty minutes. An Airship arrived and attempted to illuminate the suspect, but the light was enough to enable the deputies to see what was in the suspect's right hand. Deputy Riordan advised all deputies at the scene via his radio that the suspect possibly had a gun and to take appropriate cover.

Shortly after the Airship arrived, the suspect stood up and with his left hand, did the "sign of the cross," and ran eastbound up the embankment and into the bushes. Deputy Riordan said this action by the suspect "worried" him. He heard Deputy Garcia, who was just next to him say, "Oh shit!" Deputy Riordan yelled for the assisting deputies to maintain their positions. None of the deputies could see the suspect at this point, and the suspect remained hidden for about the next ten minutes. The deputies maintained their positions and ensured that the suspect was contained. The suspect began yelling again, however, Deputy Riordan could not understand what the suspect was yelling, but the direction of the yelling indicated to Deputy Riordan that the suspect was about thirty feet away.

During this time, the Fire Department had been requested to attempt to flush the suspect out with a

fire hose. However, before they arrived, the suspect came out of the bushes at a "dead run." He ran down the embankment and turned directly toward Deputies [redacted] Kelly, Garcia and Riordan. Deputy [redacted] had moved to a different location in the containment. As the suspect came out of the bushes, he yelled, what Deputy Riordan described as a "war cry," or a "martial arts" yell. Deputy Riordan additionally described it as a "blood curdling" yell. The suspect was running "full bore" at them. Deputy Riordan said as he had his gun pointed at the suspect, the suspect ran toward them, and he could see that the suspect was "crouched, with his body bladed towards the right side and both his hands were at his right front waistband. So, his right hip was away from us and he was coming towards us as he shouted." Deputy Riordan firmly believed, based on the suspect's actions and previous statements, that he was reaching for a gun while he was closing the distance between them.

At this point, Deputy Riordan said that he was in fear for his life and particularly, Deputy [redacted]s life, who was closest to the suspect and armed with only a bean bag shot gun and only a ballistic shield. Deputy Riordan said that based on those facts, he made the decision to use deadly force and fired one shot at the suspect. Simultaneously, he heard one additional shot. The suspect took one to two steps and there was no change in the suspect's movements. Deputy Riordan thought that the shots missed the suspect or they didn't have any effect on him. Deputy Riordan felt that the suspect was still closing the distance between them. Deputy Riordan said that he still feared for his and the other deputies' safety, he fired two more rounds, "double tap" at the suspect. He also heard several other "muffled" shots at the same time. After the shots, the suspect spun to his left side and fell face down on the ground with his hands still in the same position near his waistband. The suspect fell about ten to twelve feet away, with his head toward the deputies and on his right side in a slight "fetal position." Deputy Riordan said that he and another deputy yelled, "Suspect down!" He also heard this over the radio. Deputy Riordan also yelled out to the other deputies, "I can't see his hand, I can't see his hands. They're in his waistband!" He yelled this to prevent deputies from approaching and trying to handcuff the suspect. Deputy Riordan yelled orders for the suspect to show his hands. The suspect did not comply. Deputy Riordan could see the suspect slightly moving his head and could hear the suspect "mumbling." Deputy Riordan thought that the suspect was conscious. Deputy Riordan was worried that the suspect was possibly trying to "bait" the deputies in. Deputy Riordan was not sure if the suspect had been shot. Deputy Riordan continued to yell orders to the suspect to show his hands and the suspect did not comply. Deputy Riordan yelled for the deputy to his right (Deputy [redacted] to fire one bean bag round at the suspect. Riordan also warned the other deputies that a bean bag was going to be fired to prevent live fire. The deputy fired one round that hit the suspect in the upper back/shoulder area. The suspect "flinched" and Deputy Riordan felt the suspect was still conscious. Deputy Riordan again ordered the suspect about ten times to show his hands and the suspect did not comply, but was "muttering." Deputy Riordan then ordered Deputy [redacted]o fire a bean bag round at the suspect. Deputy [redacted] fired one round which struck the suspect's back. The suspect "tightened up his body." Deputy Riordan again ordered the suspect several times to show his hands, and again the suspect refused. Deputy Riordan ordered Deputy [redacted] again to fire a bean bag round at the suspect. Deputy [redacted] fired a second

and third round at the suspect striking his upper back. After each round, the suspect was ordered to show his hands and each time he refused, and each time he flinched, indicating that he was conscious.

Deputy Riordan considered at this point, shooting the suspect again, due to the fact that the suspect was still a threat and could, "in one quick movement," remove his gun and shoot a deputy. Deputy Riordan ordered Deputy [redacted] to fire one more bean bag round at the suspect, however, Deputy [redacted] was out of rounds. Deputy Riordan and other deputies yelled for more bean bag rounds. Deputy Riordan then saw who he believed was a sergeant walk up with an Arwen. Deputy Riordan also saw a canine unit arrive, however, he was told that the dog would not be deployed since the suspect was possibly armed.

About two minutes after the last bean bag round was fired, and they were considering their options, the suspect suddenly rolled onto his back and raised his hands over his head. An arrest team was formed and moved forward and handcuffed the suspect.

As soon as the suspect was handcuffed, Deputy Riordan put out a broadcast that the suspect was in custody. He also requested paramedics, however, they were already notified. Deputy Riordan then secured the area pending Homicide Bureau's arrival. The deputies who fired their weapons were transported back to Rail Operations Center.

The suspect was treated by paramedics and Deputy Riordan saw that the suspect was resisting treatment by the paramedics. The suspect was transported to the hospital.

DEPUTY DIANNE GARCIA

Deputy Garcia was interviewed by Homicide investigators on March 30, 2004, at 0230 hours at Transit Services Bureau Headquarters. Her attorneys, Helen Schwab and John Birke, from Green and Shinee, were present during the interview. Additionally, the interview was audio taped and summarized as follows:

Deputy Garcia told Homicide investigators that at the time of the incident, she was assigned to Transit Services Bureau/Rail Operations Center. She was working the P.M. shift in Unit 685B, which is a one person car. She started her shift at [redacted]

Deputy Garcia overheard radio traffic on the L-Tac frequency from Unit 604F2 requesting units, regarding a 902A/918 on the railroad tracks. Deputy Garcia advised the unit that she was responding from the Interstate 5 and 710 Freeways. As she drove to the area, she heard Unit 604F2 request the "patch" and update the call to an armed person on the tracks.

Deputy Garcia arrived at the scene at the same time as Unit 602F. Deputy Garcia saw Deputies Riordan and Harper taking cover behind a pole. These deputies pointed out the location of the

suspect near some bushes, south of their location. As she started to walk in that direction, they called her back and warned her about the possibility of the suspect having a gun. Deputy Smith then cut an opening in the chain link fence and joined Deputies Riordan and Harper down on the tracks, behind the cover of the light pole.

At this point, Deputy Garcia said she saw the suspect with his right hand tucked into his waistband. She heard deputies ordering the suspect to show his hands. Deputy Garcia said she then heard the suspect say something to the effect, "I do have my right hand in here, if you want it, come and get it." Deputy Garcia heard additional radio traffic and additional units arrived. They continued to order the suspect to show his hands, but he refused. The suspect was mumbling incoherently. Deputy Garcia said that she could see an object in the suspect's hand, but she did not know what it was. They continued to illuminate him with their flashlights and the airship also attempted to illuminate the suspect, however, she said this wasn't working very well.

Deputy Garcia said after about twenty minutes of ordering the suspect out and to show his hands, the suspect, "all of a sudden, proceeded to bless himself." At that point, Deputy Garcia said, "What was going through my mind obviously was this guy wants, he wants to go and he has something planned and he's prepping himself for it." When asked to explain, "Wants to go," she said, "I believe he had his weapon with him and he was ready to either take himself out or take one of us out."

At short time later the suspect "shuffled" into the bushes and she lost "complete" sight of him. They continued, several times, to order the suspect to come out of the bushes. Although she could not see the suspect, she could hear him in the bushes and she estimated that he was about thirty feet away from her. A containment was set up around the suspect.

At this point, Deputy Garcia proned out next to Deputy Riordan, still unable to see the suspect, but she could still hear him. "All of a sudden," the suspect came out screaming and charging toward the deputies. The suspect's right hand was in his waistband and his left hand was covering his right hand. Deputy Riordan was ordering the suspect to show his hands and the suspect refused to comply. Deputy Garcia said that the suspect advanced quite rapidly and when he was about ten feet away, she fired about three to four rounds from her duty weapon. She was not sure how many rounds she fired because there were other rounds being fired simultaneously. Deputy Garcia said that she fired at the suspect because she felt that the suspect was armed and she was in fear that the suspect was going to shoot either her or the other deputies.

> **IAB Note:** Homicide investigators determined that Deputy Garcia actually fired four rounds.

After the rounds were fired, the suspect was still running. He then fell to the ground. Once on the ground, the suspect's hands were still concealed. Deputies continued to order the suspect to show his hands, but he refused. The suspect was still moving on the ground. Deputy Garcia heard a

deputy tell another deputy to fire a stun bag at the suspect. A stun bag round was fired, however, the suspect continued to move. Deputies continued to order him to show his hands and he again refused. Several more stun bag rounds were fired and eventually the suspect rolled onto his back and raised his hands over his head. Deputies then handcuffed the suspect.

Paramedics immediately came and treated the suspect.

DEPUTY TINA KELLEY

Deputy Kelley was interviewed by Homicide investigators on March 30, 2004, at 0305 hours at Transit Services Bureau Headquarters. Her attorneys, Helen Schwab and John Birke, from Green and Shinee, were present during the interview. Additionally, the interview was audio taped and summarized as follows:

Deputy Kelley told Homicide investigators that at the time of the incident, she was assigned to Transit Services Bureau/Rail Operations Center. She was working the P.M. shift in Unit 602F, which is a two person car. Her partner was Deputy Amor Smith. Deputy Smith was the driver. She started her shift at [redacted]

Deputy Kelley and her partner heard via their radio, a unit requesting back-up regarding a possible 5150 on the train tracks throwing rocks. As they were driving to the location, the call was updated to the person possibly being armed. They were directed to Spring Street, which is north of the actual area of the incident. They were then directed to Deputy Riordan's location on the tracks. In order to get there, Deputy Smith cut an opening in the chain link fence, just east of Deputy Riordan's location. Deputy Kelley walked down the embankment and met with Deputy Riordan, who pointed out the suspect's location. She saw the suspect sitting on the embankment behind some bushes to the south of them and east of the tracks. She also said that she could see an object in the suspect's waistband, but the suspect was coving the object with his right hand. She could tell that it was some type of object, but she could not tell what it was.

Deputy Kelley said that she saw Deputy Riordan proned out on the ground behind a post, with his weapon drawn. She also saw Deputy Harper who also had his gun drawn and also shining his flashlight on the suspect. She also saw Deputies Garcia and other deputies with their guns drawn and pointed at the suspect and also with their flashlights on and pointed at the suspect. They were trying to identify the object in the suspect's waistband. Deputy Riordan gave several orders for the suspect to show his hands, however, the suspect refused and yelled, "Come and get me!" Orders for the suspect to come out and show his hands continued for a while, but he again refused.

At one point, Deputy Kelley said the suspect "made a Catholic cross to himself." She then heard Deputy Garcia make a comment, something to the effect, "Oh my God!" She immediately knew that Deputy Garcia also saw the suspect "cross" himself. The suspect suddenly turned and ran up into the bushes of the embankment and out of sight. Numerous commands were given to the suspect to

come out and to show his hands, but he refused. She heard the sergeant tell everyone to remain in their positions and to have the bean bag shotguns ready. Deputy Kelley also heard the sergeant requesting the Fire Department to use hoses to get the suspect out.

Deputy Kelley said that during the next ten to fifteen minutes, she became very concerned that the suspect had a gun. She felt that the suspect was waiting for the right opportunity. Deputy Kelley then saw the suspect came out of the bushes at "a very, very fast, aggressive way" toward the deputies. The suspect was yelling incoherently. Additionally, the suspect had both of his hands near his right side waistband and he had turned the right side of his body away from the deputies. Deputy Kelley described the suspect's hands as coming forward, while he was running toward them at a fast pace. She felt that the suspect was drawing a gun. Deputy Kelley felt that her life and her partners' lives were in great danger, so she fired two rounds at the suspect. She heard other rounds at the same time, but she did not know who fired.

The suspect fell to the ground and went "into a ball on his right hand side." The suspect's hands were not visible and orders were given for him to show his hands. The suspect did not comply. Deputy Kelley said she it looked like the suspect was playing "possum," and she was not sure what he was doing. Deputy Riordan again ordered the suspect to show his hands and again the suspect refused. Deputy Kelley also ordered the suspect to show his hands, to which he did not comply. At this point, Deputy Kelley saw the suspect move and she told the other deputies to be careful. Deputy Kelley said that bean bag rounds were deployed and fired at the suspect after several warnings were given. The suspect eventually raised his hands and he was then handcuffed.

INVOLVED EMPLOYEE'S STATEMENTS WHO USED LESS THAN LETHAL FORCE:

DEPUTY [redacted]

Deputy [redacted] was interviewed by Homicide investigators on March 30, 2004, at 0330 hours at Transit Services Bureau Headquarters. His attorney, Helen Schwab, from Green and Shinee, was present during the interview. Additionally, the interview was audio taped and summarized as follows:

Deputy [redacted] told Homicide investigators that at the time of the incident, he was assigned to Transit Services Bureau/Rail Operations Center. He was working the P.M. shift in Unit 605F, which is a two person car. His partner was Deputy Reynolds. He started his shift at [redacted]. They were working a double shift at the time.

Deputy [redacted] heard via Sheriff's radio that Unit 604F was asking for back-up regarding a 5150 on the railroad tracks near the Willow Station. A short time later the call was updated saying that the suspect was throwing rocks. Deputy [redacted] and his partner were about to go off-duty when they heard the call. They then responded Code 3 at the request of their desk. The Code 3 response was because the suspect possibly had a gun.

Deputy [redacted] and his partner drove to the location and parked their patrol car on Spring Street near an access road west of the railroad tracks. Deputies [redacted] and Reynolds and Sergeant Wilkinson walked south from Spring Street on the tracks and met with other deputies near the light pole. Deputy Reynolds "split" off to the west side of the tracks. Deputy [redacted] saw the suspect about twenty yards south of the pole and just east of the tracks about fifteen to twenty feet. Deputy [redacted] removed his duty weapon since he knew the suspect was possibly armed.

Deputy [redacted] said that Deputy Barlow was next to him and had a stunbag shotgun. Deputies Harper, Riordan, Kelley and Garcia was also nearby. Deputy [redacted] added that Deputies Riordan and Garcia were proned out on the ground and he was standing just to the west of them. Several Deputies ordered the suspect to show his hands, but he refused.

A canine unit was also staged in the area to the west of them.

Deputy [redacted] said, "The next thing that happens, I know that he said something, he's doing something, he turns around and bolts into the bushes there." The bushes were up the embankment. Prior to the suspect running into the bushes, he noted that the suspect's right hand was in his waistband area. They continued to order the suspect to show his hands.

Deputy Harper left the immediate area to set up a containment on the suspect. Another deputy arrived and brought a ballistic shield and gave it to Deputy [redacted] A short time later, Deputy Ledezma brought another stunbag shotgun and handed it to Deputy [redacted]. Some of the deputies were checking the area to see if the suspect ran up the embankment. Deputies continued to order the suspect out. At one point, he overheard Sergeant Imura request the Fire Department in order to possibly use a fire hose to flush out the suspect. At about the same time, Deputy [redacted] saw the suspect slide down the embankment on his "butt," then jump to his feet and "did a full sprint" toward the deputies. Deputy [redacted] said he heard a "grunting" sound coming from the suspect. Deputy [redacted] felt that the suspect was going to "take us on." Deputy [redacted] said he had the stunbag shotgun in his hand and immediately fired three stun bag rounds at the suspect. Deputy [redacted] heard other "popping" at the same time. The suspect fell to his knees and then onto his chest with his arms underneath. Deputy [redacted] along with the other Deputies once again ordered the suspect to show his hands and the suspect did not comply. Deputy Riordan then requested a stunbag round to be fired at the suspect in an effort to get him to show his hands. Deputy [redacted] fired an additional round at the suspect and struck the suspect in the shoulder. When the round struck the suspect, Deputy [redacted] saw the suspect "flinch." The suspect still did not show his hands. Additional requests were made to fire stunbag rounds at the suspect, however, Deputy [redacted] was out of rounds. He then heard Deputy [redacted] fire his stunbag rounds at the suspect. A short time later, Deputy [redacted] said he heard the suspect say, "Okay, I give up, I give up!" He was then ordered to roll over and put his arms in front of him. The suspect then rolled on his back and put his hands over his head. Two deputies then approached and handcuffed the suspect, while Deputy [redacted] covered them with his duty weapon. The suspect was handcuffed and treated by paramedics at the scene.

Deputy [redacted] said he did not know that live rounds had actually been fired at first. He thought it was just him and the other stunbag shotgun being fired.

Deputy [redacted] concluded by saying the whole incident was scary and made you think about how quickly the suspect could close the distance between them. He said the reason he fired the stunbag at the suspect was because the suspect was running right at him and the deputies and he didn't know if the suspect had a gun, knife or any other weapon.

DEPUTY [redacted]

Deputy [redacted] was interviewed by Homicide investigators on March 30, 2004, at 0405 hours at Transit Services Bureau Headquarters. His attorney, Helen Schwab, from Green and Shinee, was present during the interview. Additionally, the interview was audio taped and summarized as follows:

Deputy [redacted] told Homicide investigators that at the time of the incident, he was assigned to Transit Services Bureau/Rail Operations Center. He was working the P.M. shift in Unit 603F, which is a two person car. His partner was Deputy Casada. Deputy Casada was the driver. He started his shift at [redacted]

Deputy [redacted] and his partner were on patrol when they heard a back-up request from Unit 604F2 regarding a person on the railroad tracks near the Willow Station. Additionally, the person was "playing chicken with the train," and throwing rocks. They were equipped with a bean bag shotgun, so they assigned their unit to the call. They drove there to provide back-up. The call was updated, stating the person was possibly armed with a gun.

On arrival, Deputy [redacted] and his partner parked their patrol car on Spring Street. Deputy [redacted] took the bean bag shotgun, and along with his partner, walked southbound on the tracks. Deputy [redacted] took a position with Deputies Kelley, Riordan and Garcia, near a light standard. Deputy Casada took a position on the west side of the tracks.

Deputy [redacted] said he initially could not see the suspect, but he was briefed by Deputy Riordan as to the suspect's location. Deputy Riordan told Deputy [redacted] that the suspect had said that he had a gun and was refusing to come out. Deputy Riordan requested that Deputy [redacted] standby with the "less than lethal" weapon. Deputy [redacted] could not see the suspect, but he could hear the suspect in the bushes talking. Deputy [redacted] was unable to understand what the suspect was saying due to the helicopter noise. Deputy [redacted] said that for seven to ten minutes, the suspect was given numerous orders to come out of the bushes and show his hands. The suspect refused to comply with any of the orders. Deputy [redacted] requested the deputies in patrol units on the west side of the tracks to use their P.A. system to order the suspect out. Simultaneously, preparations were being made to possibly arrange for the Fire Department to use their hoses to flush out the suspect. However, prior to the use of the P.A. system, and the use of the fire hoses, the suspect came out of

his hiding place in the bushes. Deputy [redacted] said the suspect gave a "war cry" type yell and started running directly toward him and the other deputies standing by the light pole. Deputy [redacted] described the yell as something you would associate with martial arts or a "charge." He also described the suspect as "bladed," with his right side away from the deputies, crouched over, with his right hand in his right waistband area and his left hand covering his right hand. Deputy [redacted] said at this point, he felt very "vulnerable." He felt the speed in which the suspect was running toward him, meant that the suspect intended to "inflict great bodily injury" on him and his partners. Deputy [redacted] said that the only weapon that he had available to him at the time was the bean bag shotgun, so he took aim and fired one round at the suspect, striking him in the shoulder area. The round appeared to have no effect on the suspect. At the same time, Deputy [redacted] heard other firearms being fired. The suspect spun to his left and dropped to the ground on his stomach. While on the ground, the suspect was still moving and his hands were underneath him. Deputy [redacted] along with Deputy Riordan and another deputy, all gave the suspect numerous commands to show his hands. The suspect did not comply with the orders and Deputy Riordan directed that "a less than lethal" weapon be fired at the suspect, in an effort to get the suspect to show his hands. One round from the stun bag shotgun was fired by Deputy [redacted] striking the suspect in the shoulder area. Deputy [redacted] said that he knew the suspect was still alive based on his reaction when the round struck him. The suspect was again ordered to show his hands and again the suspect refused. Another command was given to fire the stunbag shotgun at the suspect and Deputy [redacted] fired one more round to the suspect's lower back area. The suspect again moved, indicating to Deputy [redacted] that the suspect was alive. Again the suspect was ordered to show his hands and again the suspect refused. Deputy [redacted] then fired an additional two rounds at the suspect and the suspect again refused to show his hands. Deputy [redacted] said that they would have fired additional rounds at the suspect, however, they were out of bean bag rounds.

At short time later, the suspect rolled over on his back and raised his hands over his head. Deputy [redacted] and two other deputies approached the suspect and handcuffed him. Paramedics were requested and treated the suspect.

WITNESSES STATEMENTS:

Sworn:

DEPUTIES SCOTT HARPER, MARIO RODARTE, ROBERT REYNOLDS, ERIC ALBANO, RAYMOND DIETRICH, MARLON QUESADA, [redacted], AMORE SMITH, AND SERGEANT GAYLORD IMURA all witnessed a portion of the shooting, either the live fire or the less than lethal force from the stunbag shotguns.

All deputies were interviewed by Homicide and Internal Affairs Bureau investigators and each independently described the events similarly to the involved deputies.

Refer to Exhibit A, Pages 57, 59, 72, 73, 75, 91, 150, 155, & 156 for summaries of the witness deputies interviews

SUSPECT STATEMENTS:

KEVIN ELLIS

On April 19, 2004, at 0830 hours, Sergeant Seymour drove to Long Beach Memorial Hospital and interviewed Suspect Ellis.

Suspect Ellis related that he had been living on the streets for the past four months. He was depressed because his mother had kicked him out of the house. He also said that he is a diagnosed schizophrenic and when he stopped taking his medication, he began hearing voices. He added that he has been in and out of institutions all his life. He described himself as "a problem child and the black sheep of the family."

Regarding the night of the incident, Suspect Ellis said that he ended up on the railroad tracks because he was fed up with no other place to go. He said that the "voices" convinced him that the Long Beach Police Department and the Sheriff's Department and been following him and he believed they wanted him dead. Ellis said that if he could get shot, his life and problems would be over with.

He said he charged the deputies hoping that they would kill him quickly. He hoped that the deputies would shoot him in the head. He remembered that he was disappointed when he realized he was not shot in the head. He explained that the only way to kill a schizophrenic is to "kill the brain."

Suspect Ellis acknowledged that the deputies present at the scene might have believed, based on his actions, that he had a gun. He also acknowledged that those same deputies saved his life by calling for rescue personnel and ensuring he was transported to the hospital for treatment.

Suspect Ellis insisted he was not trying to hurt the deputies. He just wanted to die.

A suicide note written by Suspect was found at the scene.

Refer to Exhibit A, Page 97 for a complete summary of Suspect Ellis' statement

MISCELLANEOUS

On October 27, 2004, the Justice System Integrity Division of the Los Angeles County District Attorney's Office completed their review of this non-fatal shooting. They found that Deputies Riordan, Kelley, Garcia[redacted] and [redacted]cted lawfully in self-defense and defense of each other.

District Attorney Christian Gullon wrote in his conclusion:

"Unbeknownst to deputies, Kevin Ellis was suicidal and created a high risk situation hoping that the deputies would kill him. Ellis stated he had a gun and charged deputies, while concealing his hands, in an attempt to persuade the deputies of the necessity of shooting him. Under these circumstances

it was certainly reasonable for the deputies to believe that in order to prevent serious injury or death, the use of deadly force was necessary. In fear for their lives or their partners, Deputies Riordan, Kelley, and Garcia, responded with deadly force to end the threat. Deputies [redacted] and [redacted] perceived the identical threat and used less lethal weapons to stop Ellis. We conclude that all five of the deputies acted in lawful self-defense and the defense of others. Therefore, we are closing our file and will take no further action on this matter."

Refer to Exhibit B-District Attorney's Letter of Opinion on Deputy-Involved Shooting